

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1629

Hillsborough County

SPONSOR(S): Glorioso

TIED BILLS:

IDEN./SIM. BILLS: SB 2814

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Military & Local Affairs Policy Committee</u>	<u></u>	<u>Rojas</u>	<u>Hoagland</u>
2)	<u>Economic Development & Community Affairs Policy Council</u>	<u></u>	<u></u>	<u></u>
3)	<u></u>	<u></u>	<u></u>	<u></u>
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SUMMARY ANALYSIS

Recent challenges to Hillsborough County Public Transportation Commission rules filed at Division of Administrative Hearings (DOAH), have been dismissed for lack of jurisdiction.

The bill amends ch. 2001-299, L.O.F., so that any person substantially affected by a rule or proposed rule of the Hillsborough County Public Transportation Commission may challenge the validity of the rule at DOAH pursuant to s. 120.56, F.S.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Chapter 2001-299, L.O.F., created the Hillsborough County Public Transportation Commission (PTC) to regulate and supervise the operation of public vehicles on the public highways of Hillsborough County and its municipalities, and all other matters affecting the relationship between the operation of public vehicles and the traveling public.

The PTC is an independent special district, and except as otherwise provided by ch. 2001-299, L.O.F., the PTC must comply with all applicable provisions of ch. 189, F.S.,¹ and any other general law relating to special districts.

Membership

The PTC currently consists of seven elected public officials representing the municipalities and governments within Hillsborough County. The membership consists of three members from the Hillsborough County Board of County Commissioners appointed by this board, two members from the Tampa City Council appointed by this council, one member from the Plant City Commission appointed by this commission, and one member from the Temple Terrace City Council appointed by this council. Each member must serve without compensation, and the term of the office is for a period of two years. In addition, each governing body must also appoint an alternate member to the PTC to serve during the absence of any regular member.

Application and Licensing Process

The PTC requires companies, their owners and operators, and their vehicles and drivers, to submit to an application and review process that requires minimum standards, as set forth by the PTC, before obtaining a "permit" or "certificate" from the PTC to operate. These "Operator Permit" rules include a "Certificate Of Public Convenience and Necessity" (COPCN) application process that includes a business plan, good credit, insurance, a valid Florida driver's license and driver history, Florida Department of Law Enforcement (FDLE) and National Crime Information Center (NCIC) criminal history background checks for business owners, and other requirements such as minimum vehicle standards. An independent "Hearing Master" at an advertised public hearing reviews COPCN operator permit

¹ Chapter 189, F.S., addresses "Special Districts: General Provisions."

applications. The Hearing Master then submits the findings and recommendations to the full PTC Board at the PTC monthly public Commission meeting for final approval.

Administrative Procedure Act

The Administrative Procedure Act (APA) is found in ch. 120, F.S. Florida followed the example of the federal government and other states by adopting its first extensive APA in 1961 in an effort to provide comprehensive and standardized administrative procedures pertaining to executive branch agency actions. The APA provides a “check and balance” function by increasing administrative agency accountability to the legislature and Florida’s citizens. The modern version of Florida’s APA was enacted in 1974 and has been amended almost every year since, while maintaining its basic components. The applicability of two key sections of the APA to the PTC are currently at question, and are detailed below.

Challenges to PTC Rules

As a special district with jurisdiction within only one county, the PTC is a state agency for purposes of the APA only to the extent that it is expressly made subject to the APA by chapter 2001-299, L.O.F. That act requires the PTC to adopt rules pursuant to the APA but it does not address rule challenges under s. 120.56, F.S.

There have been some recent challenges² to the PTC rules filed at Division of Administrative Hearings (DOAH), but these cases were dismissed for lack of jurisdiction. One of the DOAH dismissal orders instructed the petitioner to seek redress in an appellate court pursuant to s. 120.68, F.S., which is for judicial review. However, s. 120.68, F.S., explicitly forbids the use of that section to initiate a rule challenge. Section 120.68, F.S. is intended for the review of decisions from lower tribunals, but the DOAH order would place the appellate court in the position of the fact-finder with no decision to review. Accordingly, the PTC staff recommended to the Joint Administrative Procedures Committee (JAPC) that the Legislature might consider whether it is advisable to amend the special act to specify how a person can legally challenge a PTC rule. JAPC then recommended that the Legislature amend the special act.

Effect of the Bill

The bill amends ch. 2001-299, L.O.F., so that any person substantially affected by a rule or proposed rule of the PTC may challenge the validity of the rule at DOAH pursuant to s. 120.56, F.S.

B. SECTION DIRECTORY:

Section 1. Amends ch. 2001-299, L.O.F., so that rules may be challenged pursuant to s. 120.56, F.S.

Section 2. Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 17, 2010

WHERE? The Tampa Tribune, Tampa, Hillsborough County, Florida

² Case No. 08-0855RU and Case No. 08-5857RX

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES